

MINUTES

INDIANA OPTOMETRY BOARD

MAY 5, 2010

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Morrow called the meeting to order at 10:00 a.m. in the Indiana Professional Licensing Agency, Indiana Government Center South, 402 West Washington Street, Conference Room W064, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 25-24-1-2.

Board Members Present:

Douglas C. Morrow, O.D., President
Natalie Olinger-Stine, O.D., Secretary
James Hunter, O.D., Member
Carl Golightly, O.D., Member
Stephan Van Cleave, O.D., Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Heather Hollcraft, Assistant Board Director, Professional Licensing Agency
Liz Brown, Deputy Attorney General, Attorney General's Office

II. ADOPTION OF THE AGENDA

A motion was made and seconded to adopt the agenda.

OLINGER-STINE/HUNTER

Motion carried 4-0-0

*Dr. Van Cleave was not present for the vote

III. ADOPTION OF THE MINUTES FROM THE FEBRUARY 10, 2010 MEETING OF THE BOARD

A motion was made and seconded to adopt the minutes, as amended, from the February 10, 2010 meeting of the Board.

OLINGER-STINE/HUNTER

Motion carried 4-0-0

*Dr. Van Cleave was not present for the vote

IV. APPEARANCES

A. CONTINUING EDUCATION

There were no continuing education appearances before the Board.

B. APPLICATION

There were no application appearances before the Board.

C. RENEWAL

1. James French, O.D., License No. 18003009A

Dr. French appeared before the Board, as requested, regarding a positive response on his renewal form. Dr. French answered "yes" to the question that asks "Since your last renewal, have you been convicted of or pled guilty to a violation of a federal or state law or are criminal charges pending?" He explained that in November 2009 he was pulled over for speeding and charged with driving under the influence. He had a BAC of .16. Dr. French pled guilty and was sentenced to alcohol classes, one (1) year of probation and his driver's license was suspended for thirty (30) days. Dr. French has had no priors and is currently on probation. He is also required to stay sober and submit to random urine screenings. Legal counsel advised the Board their options are to renew, deny or place Dr. French's license on probation if he agrees. Dr. French submitted the requested continuing education certificates to the Board.

Board action: A motion was made and seconded to renew Dr. French's optometry license.

GOLIGHTLY/HUNTER

Motion carried 5-0-0

V. ADMINISTRATIVE HEARINGS

A. State of Indiana vs. James Phillip Montgomery, O.D.

License No. 18001562A

Administrative Cause No. 2010 IOB 0001

Re: Complaint and Emergency Suspension

Parties and Counsel Present:

Respondent was present without counsel

Mark Mader, Deputy Attorney General for the State of Indiana

David Fleischhacker, Deputy Attorney General for the State of Indiana

Sherry Rutledge, Court Reporter

Participating Board Members:

Dr. Morrow, O.D., President (Hearing Officer)

Dr. Olinger-Stine, O.D.

Dr. Van Cleave, O.D.

Dr. Golightly, O.D.

Dr. Hunter, O.D.

Case Summary: Respondent appeared regarding a complaint filed against him with the Indiana Office of the Attorney General. He stated he is present without counsel due to not being able to pay the retainer fee. Respondent stated Mr. Hamilton is still representing him in the criminal case, just not in the administrative case. The criminal case is still under investigation. Respondent wished to proceed without counsel present. The Board approved a continuance in the complaint hearing but is going forward with the hearing for the emergency suspension. The State opened with a reminder to the Board that if they feel Respondent shows a clear and immediate danger to the public safety that he should not be able to practice and the State plans to show this. Respondent stated he has made some strides in his recovery since the complaint was filed and he will show letters and statements from doctors and addictionologist showing his drug screens have come back negative. Respondent stated he cannot afford to admit himself to Resurrection for rehabilitation but will be going to the Gilead House which is a free counseling facility for chemical dependency. Also stated he will receive one-on-one counseling with a therapist. Respondent would like to take issue with the State and prove the strides he has taken and is no longer impaired, but able to practice. Mr. Mader asked the Board to take official record in this matter. Their order of suspension found the Respondent to be a clear and immediate danger to the public for writing eighteen (18) prescriptions for Schedule II controlled substances in which he admitted he is not permitted to do so. Respondent also admitted to using DEA numbers to obtain prescriptions although he also knew he was not supposed to have DEA numbers, getting prescriptions for his son who filed the original complaint, abusing Concerta, to the INSPECT report that showed all of his prescriptions that he had obtained, and during testimony that he knew it was against the law for him to write prescriptions and was using them for himself. Respondent testified that he is seeing Dr. Moe and that he has only been taking and using prescriptions since seeing Dr. Moe. The State called Detective Matthew William Robertson with the Howard County Sheriff's Department as a witness. Det. Robertson has been a sheriff with that agency since 1994 and has been a narcotic investigator for the last nine (9) years. He is currently investigating Respondent in the criminal case. The Det. was contacted by Tim Thomas of the Indiana Professional Licensing Agency on May 26, 2009 where Mr. called Det. Robertson's attention to the K-Mart Pharmacy in Kokomo, Indiana. Det. Robertson met with Respondent on May 27, 2009 when he caught Respondent

on video. Respondent was arrested and the Concerta prescription was confiscated. He was advised to contact his attorney at that time. Mr. Hamilton requested on May 28, 2009 to speak with Respondent and Det. Robertson to discuss helping them with their investigation. Det. Robertson indicated this is common practice. Respondent was released on his own recognizance. State entered into evidence States Exhibit 1, a transcript of Det. Robertson's secretaries typing of his recorded Miranda to the Respondent upon his arrest at the K-Mart Pharmacy in Kokomo. Det. Robertson met with Respondent and his attorney on May 29, 2009 at which time he told Respondent's attorney he was free to go at anytime and was not being arrested at this time. They discussed what he may be able to provide to the State of Indiana in their investigation. They told the detective that he obtains Oxycontin to trade for Concerta with a person named Rebecca Stone in Jonesboro, Indiana and that he would deliver the pills to her to make the trade. Respondent is the one that advised him of this situation. Respondent stated that Burton Munsey had been involved. Det. Robertson has a statement that Respondent gave him a prescription for Concerta in which he was to have filled at the K-Mart Pharmacy in Kokomo and take back to Respondent. A floater pharmacist in the pharmacy found the DEA number on the prescription suspicious and questioned this. The pharmacist contacted Respondent's office to question this and was given a new DEA number which was believed to belong to the K-Mart. Mr. Munsey became suspicious and concerned that he was in trouble so he never picked up the prescription. Ms. Stone had been under investigation in her county for selling Oxycontin A on the street for \$50.00 per pill. Her children, Joseph and Jessica, had been coming and going from the home and was also selling and abusing controlled substances. Detectives went with two DEA officers and met with Dr. Hoshaw in Russiaville, Indiana. She provided them with voided prescriptions for evidence and proved she is not working with Respondent in this. They then travelled to Jonesboro to corroborate the story that Respondent had given them regarding Rebecca Stone. Det. Robertson had planned to front Respondent in as an informant to get him into the home of Ms. Stone. He was able to purchase pills on January 12, 2010 from Ms. Stone. Det. Robertson spoke with Ms. Stone on March 10, 2010. He recorded this meeting by audio and video. He learned that this relationship with Ms. Stone and the Respondent goes way back to the mid 1990's. Ms. Stone told Det. Robertson that she and her husband had taken their children to the Respondent and she has worked as his housekeeper. She also told Det. Robertson that her husband and the Respondent traded pills until his death and that she has been doing the same since 1997 when she became wheelchair bound. She indicated to Det. Robertson that the Respondent has been travelling to Jonesboro to deliver pills to her. He would bring her either full or partially filled Oxycontin A prescriptions in marked and unmarked bottles and she would trade him for her Concerta prescription that he would take to a CVS Pharmacy in Gas City, Indiana and have filled. Respondent had no questions for the witness and agreed that what Det. Robertson said was true. He did state that not all of the

Oxycontin was traded, only some, which only proves further his addiction to Concerta, not Oxycontin. Respondent had no witnesses to present. The State asked Respondent if he testified that he is a patient of Dr. Moe and he said yes. The State asked if he was under the care of Dr. Moe in June or July of 2009, he said yes. The State pointed out that he obtained Concerta illegally while being seen by Dr. Moe. When asked what his treatment from Dr. Moe consisted of, he stated mostly how to manage the use of medications he was taking. The State clarified that he had a prescription for Concerta in which he no longer has, yet in 2009 when he started to see Dr. Moe on a monthly basis, he continued to abuse Concerta even going as far as trading Oxycontin for Concerta in which he agreed to doing. Respondent was not getting drug tests with Dr. Moe. He stated he is no longer seeing Dr. Moe, but is now seeing an addictionologist, Ken Gardner, referred to by Reva Harris at the Gilead House on a weekly basis. He is now receiving random drug tests for the past three (3) weeks. Respondent stated he has been treated by Reva Harris since March 31, 2010 and does not have an appointment with Mr. Gardner until May 19, 2010. He explained the Gilead House is a free out-patient facility in Howard County for people, mostly women, but anyone for addiction management and chemical dependency. He has made contributions to them in the past and has helped women there as well. He stated this is a financial decision and that Reva Harris is a past addict and that he has seen her three (3) times. Respondent submitted to drug tests on April 26, 2010 and May 4, 2010. Respondent entered into evidence Defense Exhibit 1, a letter from Reva Harris, regarding his drug screenings. Respondent stated the drug screenings were negative and Concerta falls under methamphetamines or amphetamines. The letter indicates he has continued visits with Reva Harris and is prompt and consistent with appointments. Respondent only tested positive for Xanax of which he has a prescription for anxiety. The State feels Respondent should admit himself in to Resurrection in Chicago, Illinois which has an intensive out-patient clinic. The State closed with Mr. Mader stating that asking the Board to extend an emergency suspension is not something they take lightly. The State is concerned the Respondent was not honest with Dr. Moe and it is apparent that treatment is really just now beginning since treatment with Dr. Moe is nonexistent. The State feels the treatment he is getting with Ms. Harris and Mr. Gardner is a step in the right direction and he can always find an AA/NA group to attend meetings with as they have been found to be very successful in helping individuals with their addictions. The State stands behind their feeling that Respondent presents a substantial immediate danger to the public and that he needs to get his psychological, medical and addiction issues under control before the Board lets him practice again. Respondent asked if the suspension was due to writing the prescriptions and if so, that is not going on any longer. He also asked if it was due to his addiction and if so, what can he do to make amends and assured the Board that he is working on his addiction issues with Ms. Harris and Mr. Gardner at Gilead House. The Boards legal counsel explained that he is here today regarding the extension of the emergency suspension and that it can be extended up to ninety (90) days if

the Board feels he is a clear and immediate danger to the public as the final hearing in his case was continued at the States request. The Board feels his addiction is a clear and immediate danger since there has been no continuity in the treatment or care of his addiction. They are concerned it has been ninety (90) days since his last meeting and suspension and they have seen no real progress in treating his impairment. Specifically there have only been two (2) drug tests in the last two (2) weeks. Respondent has been advised by the Board to get very aggressive in his treatment to show the Board he is capable to practice.

Board action: A motion was made and seconded to extend the emergency suspension of Dr. Montgomery's optometry license for a period of 90 days.

GOLIGHTLY/OLINGER-STINE
Motion carried 5-0-0

VI. DISCUSSION

A. Rule Readoption

LSA Document #09-781

Re: 852 IAC 1-1.1-4 Applicant fees, transcripts, examination scores and photographs

852 IAC 1-13 Revocation or Suspension on License

852 IAC 1-17 Limited License

Board action: A motion was made and seconded to readopt the above rules that are set to expire with consideration to the impact on small businesses.

VAN CLEAVE/OLINGER-STINE
Motion carried 5-0-0

B. Arthur B. Epstein, OD, FAAO, Executive Director American Board of Clinical Optometry

The Board discussed the American Board of Clinical Optometry letter sent to the Indiana Optometry Board. There was an objection to the way the ABO kicked off the national board and regulatory boards that were going to determine the criteria for board certification. The Board feels this is going to be a big issue at the ARBO meeting according to their meeting agenda. Certification is not a state requirement, but it will become a national healthcare requirement to be "Board Certified".

C. New Applicants

Ms. Vaught discussed with the Board the procedure for new graduates to apply for licensure in Indiana. They must complete an application and send that as well as the fee and photos. Transcripts are now required to come

directly from the school. Once the application and transcripts are received they are eligible to take the jurisprudence examination. Their license will be issued upon successful completion of their national boards.

VII. CONTINUING EDUCATION

There were no continuing education applications before the Board.

VIII. APPLICATION REVIEW

A. Endorsement Applications

There were no endorsement applications for the Board to review.

B. Examination Applications

There were no examination applications for the Board to review.

C. Faculty Limited License

There were no faculty limited license applications for the Board to review.

D. Professional Corporation Applications

There were no professional corporation applications for the Board to review.

IX. PROBATIONARY REPORT

There were no probationary reports to review.

X. REPORTS

A. Consumer Complaints

Dr. Van Cleve had no report regarding consumer complaints.

B. Indiana Optometric Association

Dr. Golightly had nothing to report to the Board from the Indiana Optometric Association.

C. Continuing Education

Dr. Hunter has reviewed 12.5 hours submitted for optometry credit and approved all 12.5 of those hours. He reviewed 14 hours submitted for legend drug credit and approved all 14 of those hours.

XI. OLD/NEW BUSINESS

1. The Board rescheduled there next meeting from August 11, 2010 to July 28, 2010.
2. Ms. Vaught told the Board that after the Notice of Intent is filed there is a waiting period of 28 days before the Hearing Notice is published for public hearing. The public hearing may be held 21 days after the Hearing Notice has been published.

XII. ADJOURNMENT

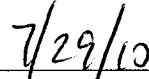
There being no further business, and having completed its duties, the meeting of the Indiana Optometry Board adjourned at 12:15 p.m.

Board action: A motion was made and seconded to adjourn the Indiana Optometry Board meeting at 12:15 p.m.

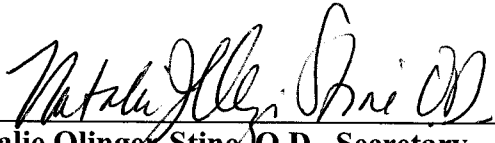
OLINGER-STINE/GOLIGHTLY
Motion carried 5-0-0



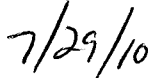
Douglas C. Morrow, O.D., President



Date



Natalie Olinger-Stine, O.D., Secretary



Date